

No. 5318-4Lab-74/20901.—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Labour Court, Haryana, Rohtak in respect of the dispute between the workman and the management of M/s Panipat Co-operative Sugar Mills Ltd., Panipat.

BEFORE SHRI O. P. SHARMA, PRESIDING OFFICER, LABOUR COURT, HARYANA, ROHTAK

Reference No. 230 of 1972

between

SHRI LAL CHAND AND THE MANAGEMENT OF M/S PANIPAT CO-OPERATIVE SUGAR MILLS LTD., PANIPAT

Present :—

Shri Onkar Parshad, for the workman.

Shri Surinder Kaushal, for the management.

AWARD

Shri Lal Chand present claimant was in the service of M/s Panipat Co-operative Sugar Mills Ltd. Panipat as a Watchman since March, 1970 and was paid wages at daily rate as stated in the demand notice, dated 5th April, 1972, which forms part of the present reference. The management terminated his services on 16th March, 1972. Feeling aggrieved, he pressed for his reinstatement and payment of back dues but without success. This gave rise to an industrial dispute. The matter was taken up before the Conciliation Officer by means of the demand notice referred to above which, however, ended in failure.

On receipt of the failure report from the Conciliation Officer, the Governor of Haryana referred the above dispute for adjudication to this Court,—vide order No. ID/KNL/13-C-72/39426-29, dated 13th November, 1972, in exercise of the powers conferred by clause (c) of sub-section (i) of section 10 of the Industrial Disputes Act, 1947, with the following terms of reference :—

“Whether the termination of services of Shri Lal Chand was justified and in order ? If not, to what relief is he entitled ?”

The parties put in their pleadings. The workman relied only upon the demand notice leading to the present reference. The management on the other hand, contested his claim mainly on the ground that on account of some serious complaints having been received from the Security Officer regarding his misbehaviour towards certain ladies residing in the workers colony, the management had lost confidence in him and he was not considered to be a fit person to be retained in service. However, the order of termination simpliciter was passed against him without attaching any stigma. The management further raised a preliminary objection that the present claimant was not a workman as defined under section 2 (s) of the Industrial Disputes Act, 1947. Shri Lal Chand concerned workman did not file any replication to controvert the above allegations of misconduct or misbehaviour towards some ladies residing in the workers colony levelled against him by the management. He merely based his case on the demand notice wherein he had alleged that the action was taken against him, because he had raised a demand for confirmation.

From the pleadings of the parties, the following two issues arose for determination in the case :—

- (1) Whether Shri Lal Chand was not a workman as defined under section 2 (s) of the Industrial Disputes Act ;
- (2) Whether the termination of services of Shri Lal Chand was justified and in order ? If not, to what relief is he entitled ?

The management has examined Shri Sube Singh, Security Officer M.W. 1 and Shri M. L. Batra, Office Superintendent M.W. 2. The documentary evidence relied upon by the management consists of the report, dated 15th March, 1972 of Shri Sube Singh, Security Officer Exhibit M.W. 1/1, the order passed by the General Manager on that report that his services be terminated forthwith Exhibit M.W. 1/2 and the termination order which followed Exhibit M.W. 1/3.

Shri Lal Chand, claimant has himself come into the witness-box and stated that as a matter of fact, the management had terminated his services during the pendency of his demand for confirmation before the Industrial Tribunal without giving him any notice or charge-sheet or holding any inquiry. He has further stated that after removing him from service some other persons have been recruited by the management. He has not produced any documentary evidence.

Arguments have been addressed at length on both sides and I have given a very thoughtful consideration to the material on record. The issues may be taken up separately.

Issue No. 1.—There is not much to discuss with regard to this issue. It is a common ground between the parties that the present claimant was engaged as a Watchman. It has been argued on behalf of the workman that since he was not discharging any duty of skilled or unskilled manual nature, he could not be termed as a workman within the meaning of section 2(s) of the Industrial Disputes Act, 1947. I am afraid, the contention has no force and has not been supported by any authority. Manual work does not necessarily mean the work done by hands. A Watchman who stands on his legs and keeps a watch for the security of the property of the factory or performs other duties pertaining to the entry into or exit from the factory of the workmen or other persons concerned does indulge in duties of physical nature which are tantamount to manual work. The issue is accordingly decided in favour of the claimant and against the management and it is held that he is a workman as defined under section 2 (s) of the Industrial Disputes Act, 1947.

Issue No. 2.—This issue relates to the merits of the case. As already pointed out, Shri Lal Chand workman concerned had been working as a daily rated worker and according to his own showing he had raised a demand for confirmation. It is also established from the facts on record that his services have not been terminated by way of punishment, the impugned order of the termination of his services is an order of termination simpliciter without attaching any stigma to him. The case for the management is that the Security Officer Shri Sube Singh M.W. 1 on the round of the workers' colony had received complaints of serious misbehaviour towards certain ladies against this workman and he submitted his report about the matter to the General Manager which is Exhibit M.W. 1/1 on record. According to this report the conduct of this workman was not above board and he did not enjoy good reputation. The General Manager after discussing the matter with the Security Officer was satisfied that Shri Lal Chand was an undesirable person and was not fit to be retained in service as Chowkidar, whereupon the impugned order of the termination of his services followed. He was offered one month's wages in lieu of notice which he declined to receive.

The learned representative of the workman has emphatically argued that the termination of the services of this workman is illegal and wrongful and has not been brought about in accordance with the Standing Order 'L' which forms part of the contract of his service and reads as under :—

"The employment of a workman permanent or seasonal can be terminated in the following cases :—

- (a) Genuine retrenchment.
- (b) Infirmary and disability.
- (c) Misconduct.

His contention is that his services could not be terminated without satisfying any of the conditions stated above. I am afraid the contention is devoid of force in the context of the facts established in the case.

As already observed, the management had lost confidence in this workman on account of his objectionable and undesirable conduct towards certain ladies in the workers' colony as reported by the Security Officer. This allegation was specifically raised in the written statement which has, however, remained unchallenged by him. He did not file any replication to controvert the above allegation as already observed. No suggestion was made either to the Security Officer or to the Office Superintendent, the only two witnesses examined on behalf of the management that this was a false allegation and the report of the Security Officer was not based on facts. Strongly enough, even the statement of the workman himself is silent on this point. He has not stated even a word to refute the above allegation. His case is that the management had taken the impugned action of the termination of his services by way of victimisation because he had raised a demand for confirmation which was pending adjudication before the Industrial Tribunal. Even this suggestion was not put to either of the witnesses examined by the management which was necessary to demolish the case of the management and to support his own version that the management had, in fact, been actuated by a motive of victimisation and the termination of order was based on *mala fides* on the part of the management.

So, taking into consideration all the facts and the circumstances of the case discussed above, I am quite clear in my mind that the management had lost its confidence in this workman for his undesirable conduct and behaviour towards certain ladies in the workers' colony and as such it was well within its right to pass the order of termination simpliciter in respect of this workman who according to his own admission in the demand notice was a daily rated workman, without attaching any stigma against him. I am fully supported in my above view by an authority of the Supreme Court reported as 1972-L.I. C-668 (Air India Corporation, Bombay *versus* V.A. Rabello and another) which is on all fours with the facts of the instant case. In that case also the management had lost confidence in an employee on account of his misbehaviour towards the Air Hostesses. The observations of their lordships as given in para 15 of the judgement may usefully be reproduced as under :—

"Regulation 48 which has been set out earlier as its plain language shows does not lay down or contemplate any defined essential pre-requisite for invoking its operation. Action under this regulation can be validly taken by the employer at his sweet will without assigning any

reason. He is not bound to disclose why he does not want to continue in service the employee concerned. It may be conceded that an employer must always have some reason for terminating the services of his employee. Such reason apart from misconduct may, *inter alia*, be want of full satisfaction with his overall suitability in the job assigned to the employee concerned. The fact that the employer is not fully satisfied with the overall result of the performance of his duties by his employee does not necessarily imply misconduct on his part. The only thing that remains to be seen as if in this case the impugned order is *mala fide*. The record merely discloses that the appellant had suspicion about the complainant's suitability for the job in which he was employed and this led to loss of confidence in him with the result that his services were terminated under regulation 48. In our view, loss of confidence in such circumstances cannot be considered to be *mala fide*. We are unable to conceive of any rational challenge to the *bona fides* of the employer in making the impugned order in the above background. The complainant, it may be remembered had to deal with the Air-Hostesses, the performance of his duties and if the appellant was not fully satisfied beyond suspicious about his general conduct and behaviour while dealing with them, it cannot be said that loss of confidence was not *bona fide*. Once *bona fide* loss of confidence is affirmed the impugned order must be considered to be immune from challenge. The opinion formed by the employer about the suitability of his employee for the job assigned to him even though erroneous, if *bona fide*, is in our opinion final and not subject to review by the industrial adjudication. Such opinion may legitimately induce the employer to terminate the employee's services but such termination can on no rational ground be considered to be for misconduct and must, therefore, be held to be permissible and immune from challenge."

The learned representative of the workman has not been able to show anything to the contrary. Issue No. 2, is, therefore, decided in favour of the management and against the workman and the termination of his services is held to be justified and in order and, in the result, he is not entitled to any relief by way of reinstatement or payment of back dues. The award is made accordingly but without any order as to costs.

Dated the 5th June, 1974.

O. P. SHARMA,

Presiding Officer,
Labour Court, Haryana,
Rohtak.

No. 1441, dated 10th June, 1974

Forwarded (four copies) to the Secretary to Government of Haryana, Labour & Employment Departments, Chandigarh as required under section 15 of the Industrial Disputes Act, 1947.

O. P. SHARMA,

Presiding Officer,
Labour Court, Haryana,
Rohtak.

No. 5319-4-Lab-74/20903.—In pursuance of the provisions of Section 17 of the Industrial Disputes Act, 1947 (Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Labour Court, Haryana, Rohtak in respect of the dispute between the workman and the management of M/s Model Cooperative Transport Society Ltd., Gurgaon.

BEFORE SHRI O. P. SHARMA, PRESIDING OFFICER, LABOUR COURT, HARYANA,
ROHTAK

Reference No. 29 of 1970

between

SHRI SAMAY SINGH AND THE MANAGEMENT OF M/S MODEL CO-OPERATIVE TRANSPORT
SOCIETY LTD., GURGAON

Present.—

Shri C. B. Kaushik. for the Workman.

Shri R. C. Sharma, for the management.

AWARD

Shri Samay Singh concerned workman was in the service of M/s Model Cooperative Transport Society Ltd., Gurgaon as a Conductor since 1962. According to the facts made out from the record his work was not satisfactory and there were charges of mis-conduct against him from time to time and he had been given a number of warnings but without any effect. His services were terminated by the management—*vide* letter, dated 21st February, 1968 allegedly on charges of mis-conduct and after holding a proper enquiry. He felt aggrieved by this action taken against him by the management and raised a demand for reinstatement with back wages. The management did not accede to his demand. This gave rise to an industrial dispute and on the demand notice given by Shri C. B. Kaushik, General Secretary, Gurgaon, Zila Transport Karamchuri Union, Gurgaon, dated 28th May, 1968 conciliation proceedings were initiated which also ended in failure.

On receipt of the failure report from the Conciliation Officer, the Governor of Haryana, in exercise of the powers conferred by clause (c) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947, referred the above dispute for adjudication to this court,—*vide* order No. ID/24291-95, dated 19th September, 1968, with the following terms of reference :—

“Whether the termination of services of Shri Samay Singh was justified and in order? If not to what relief is he entitled?”

The parties put in their respective pleadings. Shri Samay Singh, concerned workman reiterated his demand for reinstatement with the allegation that no proper enquiry had been held against him and his services had been wrongfully terminated by the management. The management contested his claim on merits pleading *inter alia* that there was no industrial dispute within the meaning of the law and the reference was, therefore, invalid.

On the above pleadings of the parties my learned predecessor framed the following three issues :—

- (1) Whether there is no industrial dispute and this court is not competent to entertain this reference?
- (2) Whether the reference is not competent by virtue of the Punjab Cooperative Societies Act, 1961?
- (3) Whether the termination of services of the claimant Shri Samay Singh is justified and in order? If not, to what relief is he entitled?

The management brought on record the enquiry proceedings and examined as many as eight witnesses including Shri Kishan Chand Midha, Enquiry Officer, M.W. 1, Shri Harbhajan Singh, Manager, M.W. 2, Shri Santokh Singh, Accounts Clerk, M.W. 3, Shri Gian Chand, Clerk, M.W. 4, Shri Ram Singh, Cashier, M.W. 5, Shri Ram Nath, Manager-cum-Cashier, M.W. 6, Shri Kanwar Anrudh Singh, Head Treasurer, M.W. 7 and Shri Santokh Singh, Managing Director of the Transport Society, M.W. 8.

On the other hand, the workman examined one witness Shri Kartar Chand, ex-President, Gurgaon District Transport Workers' Union, Gurgaon, W.W. 1 and made his own statement as W.W. 2.

Before my learned predecessor could proceed further in the case and give his award his appointment as the Presiding Officer of the Labour Court at Faridabad was held to be void by order of Hon'ble the High Court in the case of M/s Gedore Tools (P) Ltd., Faridabad and its workmen and the proceedings remained suspended for a considerable time.

By order, dated 8th May, 1970 the State Government was pleaded to constitute another Labour Court at Faridabad and the dispute was referred—*vide* order No. 609/B-Lab-70/22387, dated 31st July, 1970 with the same term of reference.

The parties, were again called upon to put in their pleadings which they did and from their pleadings the following issues arose for determination in the case.

- (1) Whether there is no industrial dispute between the parties as defined under the Industrial Disputes Act?
- (2) Whether the present reference is bad in law?
- (3) Whether the termination of services of Shri Samay Singh was justified and in order? If not, to what relief is he entitled?

The parties have led no further evidence on issues Nos. 1 and 2. The management has examined another one witness Shri Santokh Singh, President of the respondent Society who has deposed that under the scheme of the nationalisation of the Road Transport by the State Government all the route permits of the Society have been withdrawn and the Transport business has consequently been closed. The workman has led no evidence except for filing some objections to the said enquiry held against him by the management.

Arguments have been addressed at length on both sides. Some adjournments for an amicable settlement outside the court have also been obtained but no settlement has been brought about.

As would be clear from the facts on record, the demand notice, dated 28th May, 1968 was given by Shri C. B. Kaushik, General Secretary, Gurgaon Zila Transport Karamchhari Union, Gurgaon. This demand notice is not signed by the workman concerned. In other words, it was not an individual demand as contemplated under-section 2-A of the Industrial Disputes Act, 1947. The demand of the workman having been taken up by the union it became a collective demand, but the necessary evidence has not been led in the case to establish that the demand had been espoused by a substantial number of the workmen. No proceedings of any meeting of the workman or the Executive Committee of the union to raise this demand have been produced. Even Shri C. B. Kaushik, General Secretary of the union who gave the demand notice has not come into the witness-box to state the necessary facts with regard to the raising of the demand in question. In the absence of that evidence it cannot be said that the demand had been properly espoused and it constituted an industrial dispute within the meaning of the law. Issues Nos. 1 and 2 are accordingly held against the workman and in favour of the management.

Issue No. 3.—With regard to this issue which relates to the merits of the case also Shri Samay Singh, workman concerned has made out no good case to interfere that the order of the termination of his services passed by the management. There was a specific charge against him that he had been utilising used passenger tax tickets and after taking his explanation into the charge communicated to him,—*vide* charge-sheet, Ex. M. 2, a proper enquiry was held against him by Shri Kishan Chand, Midha who has proved the record. He had fixed several dates of hearing for this enquiry, but for reasons best known to him Shri Samay Singh had elected not to appear in the enquiry proceedings. A finding of guilty was given against him by the Enquiry Officer after examining the evidence produced by the management,—*vide* his report, dated 20th February, 1968, Ex. M. 4. After considering the findings of guilty given against him by the Enquiry Officer, the management did not consider him to be desirable person to be retained in service and hence the order of the termination of his services referred to above. The workman concerned has not been able to show anything wrong with the enquiry held against him. The Enquiry Officer had given him full opportunity to appear and defend himself and if he did not participate in the enquiry in spite of proper notice, the Enquiry Officer had no alternative but to proceed *ex-parte* against him. There is nothing on the record to indicate that his findings of guilty against the workman were in any manner perverse and against the facts.

In the circumstances, the management was perfectly justified in dispensing with the services of this workman who was proved to be guilty of charge of using old and utilised passenger tax tickets. The punishment awarded to him cannot by any stretch of imagination be held to be harsh, excessive and not commensurate with his guilt especially when similar charges of mis-appropriation had been levelled against him by the management a number of times earlier, but a lenient view of the matter had been taken on the confession of the guilt by him as would be clear from the perusal of Ex. M.W. 2/2.

There is another very important aspect of the case which deserves consideration here. As stated by Shri Santokh Singh, President of the respondent Society all the route permits have been withdrawn by the State Government under the scheme of the nationalisation of the Road Transport and the business has consequently been closed. This fact has not been denied by the learned representative of the workman in the course of arguments in the case. The question of the reinstatement of the present workman as a Conductor, therefore, does not arise for the simple and obvious reason that there is now no post of the Conductor against which he could be reinstated or re-employed.

For the reasons aforesaid, issue No. 3 is also decided against the workman and the termination of his services by the management is held to be justified and in order; and, in the result, he is not entitled to any relief by way of reinstatement or payment of back wages. The award is made accordingly but there shall be no order as to costs.

O. P. SHARMA,

Presiding Officer,
Labour Court, Haryana,
Rohtak.

Dated 5th June, 1974.

No. 1440, dated 10th June, 1974.

Forwarded (four copies) to the Secretary to Government of Haryana, Labour and Employment Departments, Chandigarh as required under section 15 of the Industrial Disputes Act, 1947.

O. P. SHARMA,

Presiding Officer,
Labour Court, Haryana,
Rohtak.